

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE
NO. 02-466, JUDGE JOHN RENKE, III

SC03-1846

TRIAL BRIEF ADDRESSING
AMENDED FORMAL CHARGE IV

COMES NOW Respondent, **JUDGE JOHN RENKE, III**, by and through his undersigned counsel, and hereby files this, his Trial Brief Addressing Amended Formal Charge IV, and states the following:

FACTS

1. Amended Formal Charge IV asserts that Judge Renke knowingly and purposefully misrepresented in Exhibit A his judicial experience when he described himself as having “‘real judicial experience as a hearing officer in hearing appeals from administrative law judges’, when [his] actual participation was limited to one instance where [he] acted as a hearing officer and to other instances where [he] was sitting as a board member of an administrative agency.”

2. Exhibit A to the Amended Formal Charges does not state that he has “‘real judicial experience as a hearing officer in hearing appeals from administrative law judges’”as the Notice of Amended Formal Charges alleges. Rather, it states

that he has “real judicial experience as a hearing officer **and** in hearing appeals from administrative law judges.” (*emphasis added*).

3. The Southwest Water Management District (the “District”) is a regulatory agency created by statute and operates pursuant to authority granted by the legislature in Chapter 373, Florida Statutes and procedurally pursuant to Chapter 120, Florida Statutes. Chapter 120, Florida Statutes is the Florida Administrative Procedures Act. Under the authority of Chapter 120, an administrative hearing officer conducts a full evidentiary hearing and then provides to the District a proposed final order for consideration and approval. The members of the Governing Board act like an appellate panel in reviewing the administrative hearing officer’s orders and ultimately entering a final order. Judge Renke actively participated in the consideration of twenty-three recommended orders entered by the Department of Administrative Hearings.

4. William Bilenky, the District’s General Counsel, who had previously served as General Counsel to the Florida Public Service Commission and who had prior experience as a research assistant to a judge in the District Court of Appeal for the First District and a research assistant to a Justice on the Florida Supreme Court, witnessed Judge Renke’s efforts in considering the recommended orders. Mr. Bilenky noted that Judge Renke actively participated in those proceedings,

carrying out sophisticated reviews of the records, asking insightful questions of staff members and identifying key legal issues.

5. In cases in which there are no material issues of fact and the controversy only involves disputed legal issues, a Governing Board member is appointed to serve as a hearing officer. Judge Renke was appointed to act as a hearing officer in a case styled Milo Thomas v. Southwest Florida Water Management District, WUP No. 2011634.002. The matter was one of first impression regarding the interpretation of a statute on which there were no prior judicial interpretations and the record consisted of a seventy-seven page transcript of legal arguments as well as forty-six docket entries for pleadings.

6. Mr. Bilenky also had the opportunity to observe the judge's services as a hearing officer and formed a positive opinion concerning his work ethic and ultimate product. Although Mr. Bilenky believes that he expended approximately 100 hours in the consideration of Milo Thomas v. Southwest Florida Water Management District, he estimates that Judge Renke, as the hearing officer, devoted even more time, independently researching and formulating an opinion on the case, identifying issues and developing arguments that had not been raised by either party. Judge Renke finalized the drafted order prepared by Mr. Bilenky, adding and clarifying significant legal issues and legal conclusions that Mr. Bilenky had overlooked.

7. The description of Judge Renke’s experience at SWFWMD as “real judicial experience” was a direct response to Declan Mansfield’s repeated references to acting as “Teen Drug Hearing Officer and Teen Court Judge.” In contrast to Mr. Mansfield’s participation in the voluntary diversionary programs, Judge Renke emphasized his “real judicial experience.”

ARGUMENT

Special Counsel has the burden of proving any violations of the charged Judicial Canons by clear and convincing evidence. Florida courts define the term ‘clear and convincing evidence’ as follows:

[T]he evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

In Exhibit A, Judge Renke stated that he has “real judicial experience as a hearing officer and in hearing appeals from administrative law judges.” (*emphasis added*). This assertion is true and clearly supported by the undisputed facts. Judge Renke was appointed to act as a hearing officer in a case styled Milo

Thomas v. Southwest Florida Water Management District, WUP No. 2011634.002.

In addition, as a member of the Governing Board, Judge Renke actively participated in the consideration of twenty-three recommended orders entered by the Department of Administrative Hearings and submitted to the District for approval. Mr. William Bilenky, the general counsel of Southwest Florida Water Management District, confirms that John Renke III's statements concerning his judicial experience were accurate.

Even in the most recently filed Second Amended Notice of Formal Charges, the JQC misquotes Exhibit A, claiming that Judge Renke stated that he “has real judicial experience as a hearing officer in hearing appeals from administrative law judges.” (*emphasis added*). The JQC then asserts that Judge Renke knowingly and purposefully misrepresented his “judicial experience” because his “actual participation was limited to one instance where [he] acted as hearing officer and to other instances where [he] was sitting as a board member of an administrative agency.” The JQC’s exclusion of the word “and” is critical because it changes the entire meaning of his statement, suggesting that he heard multiple appeals as a hearing officer rather than hearing the appeals as a member of the Governing Board. While one might argue that the JQC was intentionally trying to mislead the Hearing Panel and the public, the JQC’s error more aptly demonstrates the ease with which erroneous statements can occur. In any event, Judge Renke’s literature

accurately and succinctly described his judicial experience while serving the District. There is no evidence to prove any violation concerning this charge.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of September, 2005, the original of the foregoing Trial Brief Addressing Amended Formal Charge IV has been furnished by electronic transmission via e-file@flcourts.org and furnished by FedEx overnight delivery to: Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927; and true and correct copies have been furnished by hand delivery to Judge James R. Wolf, Chairman, Hearing Panel, Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; Marvin E. Barkin, Esquire, and Michael K. Green, Esquire, Special Counsel, 2700 Bank of America Plaza, 101 East Kennedy Boulevard, P. O. Box 1102, Tampa, Florida 33601-1102; Ms. Brooke S. Kennerly, Executive Director, Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; John R. Beranek, Esquire, Counsel to the Hearing Panel, P.O. Box 391, Tallahassee, Florida 32302; and Thomas C. MacDonald, Jr., Esquire, General Counsel, Florida Judicial Qualifications Commission, 1904 Holly Lane, Tampa, Florida 33629.

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